

EXHIBIT “E”

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO: 04-10374WGY

NORTH AMERICAN SPECIALTY
INSURANCE COMPANY,
Plaintiff,

vs.

MARY & JOSEPHINE CORP. and
MATTEO RUSSO,
Defendants.

DEPOSITION OF WILLIAM J. SCOLA, a

witness called on behalf of the Defendant, Mary
& Josephine Corp., pursuant to the Federal
Rules of Civil Procedure before Jo Anne M.
Shields, Professional Shorthand Reporter and
Notary Public in and for the Commonwealth of
Massachusetts, at the Law Offices of Joseph G.
Abromovitz, P.C., 858 Washington Street,
Dedham, Massachusetts, on Tuesday, September 13,
2005, commencing at 2:01 p.m.

DUNN & GOUDREAU COURT REPORTING SERVICE, INC.
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APPEARANCES:

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ALSO PRESENT:

Robert McVey

STIPULATIONS

It is stipulated by and between
counsel for the respective parties that the
deposition transcript is to be read and signed
by the deponent under the pains and penalties
of perjury; and that the sealing and filing
thereof are waived; and that all objections,
except as to form, and motions to strike are
reserved to the time of trial.

* * *

PROCEEDINGS

WILLIAM J. SCOLA, a witness
called for examination by counsel for the
Defendant, Mary & Josephine Corp., having been
satisfactorily identified by the production of
his driver's license and duly sworn by the
Notary Public, was examined and testified as
follows:

* * *

DIRECT EXAMINATION

BY MR. PETTINGELL:

Q. Sir, could you please state your name?

A. William Scola.

Q. And your address?

5

1 A. 110 William Henry Road, North Scituate, Rhode
2 Island.
3 Q. And what is your occupation?
4 A. Insurance broker.
5 Q. What is an insurance broker?
6 A. Someone who provides insurance coverage to
7 people, a mediator between a company and a
8 client.
9 Q. You're not an insurance company in and of
10 yourself?
11 A. No.
12 Q. And when you're obtaining insurance, who do you
13 represent?
14 MR. LANGER: Objection. Calls for a legal
15 conclusion.
16 Q. You can answer.
17 A. When we obtain insurance, we represent the
18 interest of the client.
19 Q. Well, who's the client?
20 A. The purchaser of the insurance.
21 Q. So if we were talking about somebody who owned
22 a fishing vessel and wanted to get insurance
23 for their fishing boat, you would be
24 representing the vessel owner?

6

1 A. Yes.
2 Q. Now, you've been present during Mr. McVey's
3 testimony?
4 A. Yes.
5 Q. And you heard his explanation of how he would
6 contact boat owners and take it further to the
7 point of getting a quote from an underwriter?
8 A. Yes.
9 Q. And for purposes of this case, is it fair to
10 say that the underwriter that OMI was
11 attempting to purchase insurance or procure
12 insurance from was Sunderland?
13 A. Yes.
14 Q. Okay. Now, does OMI have a contractual
15 arrangement with Sunderland?
16 MR. LANGER: Let me -- let me -- again, for
17 the purposes of this deposition, Mr. Scola is
18 here to respond to Paragraph 6 of the notice,
19 which is, "What is meant by port risk
20 coverage?"
21 MR. PETTINGELL: Uh-huh.
22 MR. LANGER: He's not here to discuss Ocean
23 Marine's contractual relationship with
24 underwriters or anybody else, at least, as far

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1 as North American Specialty is concerned. If
2 Mr. Scola, at any time, wants to stop the
3 questioning and consult his own counsel, he is
4 certainly free to do that.
5 MR. PETTINGELL: We've been through this
6 before, Len.
7 MR. LANGER: I --
8 MR. PETTINGELL: He's --
9 MR. LANGER: -- understand that.
10 MR. PETTINGELL: He's also a deponent sworn
11 under oath, and he's certainly capable of
12 answering questions that fall within the
13 purview of his knowledge.
14 MR. LANGER: But he's not here by subpoena.
15 He is here --
16 MR. PETTINGELL: No.
17 MR. LANGER: -- strictly pursuant to a
18 30(b)(6) to respond to one paragraph of the
19 notice. And so, therefore, he's here at his
20 own volition to the extent he answers questions
21 beyond Paragraph 6. And if, at any time, he
22 chooses not to answer the questions or he wants
23 to consult his counsel, he is free to do that.
24 MR. PETTINGELL: Well, you've advised him

8

1 of that; and you've stated that on the record
2 now twice today. And I think we had it stated
3 back in January. So my question stands.
4 A. Could you repeat that question?
5 Q. Does OMI currently have any sort of contractual
6 arrangement with Sunderland?
7 A. We do. It does.
8 Q. It does. And did it have such an arrangement
9 back during the period of time that Policy 1,
10 Policy 2, and Policy 3 was being obtained for
11 Mary & Josephine Corp.?
12 A. It did.
13 Q. And what was that arrangement?
14 A. It was, simply, that Ocean Marine was allowed
15 to present business to Sunderland Marine.
16 Q. What do you mean by "allowed to present
17 business"?
18 A. Well, we were allowed to present business to
19 Sunderland Marine as opposed to other companies
20 that wouldn't be allowed to present business to
21 them.
22 Q. By "other companies," you mean other
23 brokerages?
24 A. Other brokerages. Yeah.

9

1 Q. Was it a form of agency agreement, to your
2 knowledge?
3 A. I couldn't answer that question.
4 Q. Okay. I may not have asked you this. What's
5 your position at OMI?
6 A. Presently?
7 Q. Yes.
8 A. President.
9 Q. Okay. And how about going back to the year
10 2001?
11 A. Treasurer.
12 Q. You were an officer of OMI at that time?
13 A. Yes.
14 Q. And you're currently the CEO?
15 A. Yes.
16 Q. In that capacity, do you have an understanding
17 of the nature of the agreement that OMI has
18 with Sunderland?
19 A. I believe I just explained that.
20 Q. Well, I'm asking if you have an opinion as to
21 whether or not it's an agency agreement --
22 MR. LANGER: Object to the extent --
23 Q. -- what your understanding is, sir.
24 A. I --

10

1 MR. LANGER: Object to the extent it seeks
2 a legal conclusion.
3 A. Yeah. I just don't -- I -- I don't know the
4 legal definition of agency agreement. I really
5 can't answer that question.
6 Q. Okay. Other than being permitted by Sunderland
7 to approach them with business, does the
8 agreement authorize OMI to do anything else?
9 A. Not to my knowledge, no.
10 Q. Okay. Now, throughout the period from 2001 to
11 2003, policy en- -- policy endorsements were
12 issued to either Policy 1, Policy 2, or
13 Policy 3. You know what I mean when I refer to
14 those policies?
15 A. I do.
16 Q. Yes. Does the agreement that OM- -- or OMI
17 has, or had at that time, with Sunderland
18 authorize OMI to issue such endorsements on
19 behalf of Sunderland or its designated
20 companies?
21 MR. LANGER: You mean, without any kind of
22 prior authority?
23 MR. PETTINGELL: My question stands.
24 Q. Does it authorize them to issue?

11

1 A. May I answer this my own way? It may take a --
2 Q. Yes.
3 A. -- a minute. We are authorized to type up
4 endorsements on behalf of Sunderland Marine,
5 have them approved by Sunderland Marine, and
6 then mail them out from our office, if that
7 answers the question for you.
8 Q. It does.
9 A. Okay.
10 Q. Is OMI also authorized, under the terms of its
11 agreement with Sunderland, to have someone sign
12 the endorsements on behalf of Sunderland as a
13 rep -- as an authorized representative of
14 Sunderland?
15 A. I believe they are. Yeah.
16 Q. Okay. OMI wouldn't issue an endorsement, I
17 take it, without first running it by -- running
18 the question of whether an endorsement should
19 issue by Sunderland and getting their approval?
20 A. Yes.
21 Q. Yes, that's a correct statement?
22 A. Yes. We would get their approval prior to
23 sending it out. Yes.
24 Q. Okay. The ultimate decision on whether or not

12

1 an endorsement should issue lies with
2 Sunderland?
3 A. Correct.
4 Q. Okay. Now, who was involved at OMI back during
5 the years 2001 through 2003 with issuing
6 endorsements, the physical --
7 A. Can --
8 Q. -- process?
9 A. The physical --
10 Q. I understand --
11 A. -- process of it? That -- that would be --
12 certainly, Ms. Houde was involved at that time.
13 Mrs. Lemoges, I believe, was involved at that
14 time. I -- I don't -- memory fails me. I
15 mean, I don't know if anyone else was involved
16 physically with actually typing them up.
17 Q. Okay. And we have, at least, one example. I
18 think it's the last page of Exhibit 7 is a --
19 Endorsement No. 3 to Policy No. 3 that was
20 signed by Mr. Ostrow as authorized
21 representative.
22 A. I believe that's correct.
23 Q. All right. Did you have -- or did you ever,
24 during that period of time, sign endorsements

13

1 as a -- an authorized representative?
2 A. I don't believe I did.
3 Q. Okay. Now, did -- did an endorsement issue
4 every time there was a change in coverage under
5 a policy?
6 A. That would be the normal and accepted way.
7 Q. Okay. Were there exceptions to the rule?
8 A. I really can't think of any.
9 Q. And what was the purpose of issuing an
10 endorsement, Mr. Scola?
11 A. Just to reflect the change in the policy.
12 Q. Well, why?
13 A. For any reason. I mean, a variety of reasons.
14 Q. Well, if you could tell us what they are.
15 A. When -- in this instance, when a client calls
16 and asks to be put on port risk, we would issue
17 the endorsement to reflect that that policy was
18 put on port risk at a certain date.
19 Q. Well, was one of the reasons to memorialize in
20 writing a change in the contract of insurance
21 between Sunderland and the insured?
22 A. Yes. That would be a reason.
23 Q. And was one of the reasons to send it to the
24 client so that the client would have

14

1 confirmation in writing that the policy
2 change -- the requested policy change had taken
3 place?
4 A. That would be a reason.
5 Q. And was one of the reasons because, if there
6 was some mistake made, it would afford the
7 insured with an opportunity to correct the
8 mistake or, at least, raise the fact that, hey,
9 this isn't what I -- what I wanted?
10 A. That was usually done ahead of the endorsement.
11 We would -- we would send out letters verifying
12 conversations to show what had taken place in
13 that conversation. And, at that point, that
14 gives the client an opportunity then to call
15 and say that is not what I wanted to have done.
16 Q. So is it fair to say that the normal practice
17 of OMI was that, if there was to be a change in
18 coverage under a given policy, there was some
19 sort of writing that went from O- -- OMI to the
20 insured, either in the form of a confirmatory
21 letter or in the form of an endorsement?
22 A. That's the way it should work.
23 Q. So that the -- the insured would --
24 A. Be aware.

15

1 Q. -- be aware of what was happening?
2 A. Exactly. And that he would -- to fully answer
3 the question, that the insured would know that
4 we were aware of what was happening.
5 Q. Right. Just good business?
6 A. Yes.
7 Q. Okay. Now, I wonder if you could tell us what
8 your duties are at OMI as president?
9 A. I have a feeling that may be beyond the scope
10 of why I'm here today.
11 Q. Well, maybe. But I've got to know who you are
12 and -- and have some understanding of where
13 you're coming from. Otherwise, your testimony
14 is sort of out there in a -- in a vacuum.
15 A. Well --
16 Q. You can be general.
17 A. Yeah. I mean, I -- I'd have to be general. I
18 mean, I certainly have responsibility for
19 seeing to it that the company is run properly,
20 that we're using proper procedures, that we're
21 doing what our clients wish us to do, that
22 we're doing what the insurance companies wish
23 us to do. And, I guess, as president, the buck
24 stops there.

16

1 MR. PETTINGELL: Off the record.
2 (A brief discussion was held off the
3 record.)
4 MR. PETTINGELL: Back on the record.
5 Q. Now, going back to the period of time when
6 Mr. Ostrow was the president --
7 A. Uh-huh.
8 Q. -- were your duties different to any degree?
9 A. To a lesser degree. Obviously, Frank --
10 Mr. Ostrow took on many of those same
11 responsibilities at that time as president.
12 Q. Could you give us a rundown of your educational
13 history?
14 A. I have a master's in business, a college degree
15 and a master's degree.
16 Q. Okay. When did you obtain the master's in
17 business?
18 A. Oh, a long time ago. 1972.
19 Q. That's a long time ago.
20 A. Yeah.
21 Q. Okay. And could you give us a rundown of
22 your -- your work experience?
23 A. Work experience prior to the insurance
24 industry, I -- I worked in a bank for

17

1 approximately five years. I worked in a
2 manufacturing business for approximately five
3 years. And then I got into the insurance
4 business.
5 Q. When was that?
6 A. 1985.
7 Q. And in what capacity did you get into the
8 insurance business?
9 A. A complete novice.
10 Q. Well, we all have to start somewhere. But, I
11 mean, who were you working for?
12 A. I worked with Frank Ostrow --
13 Q. Was this --
14 A. -- in -- in a predecessor company to Ocean
15 Marine Insurance Agency.
16 Q. Okay. And in what capacity were you working
17 with Mr. Ostrow in OMI's predecessor?
18 A. Principally, learning. I knew nothing about
19 marine insurance at the time.
20 Q. Okay. And that was beginning in 198- --
21 A. '85.
22 Q. '85?
23 A. Yes.
24 Q. Okay. And have you continued to work up to the

18

1 present time for OMI or its predecessor
2 company?
3 A. Yes.
4 Q. All right. Did you have any formal training in
5 insurance?
6 A. No.
7 Q. So it was --
8 A. Other than a -- a few classroom situations, as
9 Mr. McVey went through, to maintain licensing
10 and things like that. However, those were so
11 minimal in marine insurance as to be worthless
12 towards marine.
13 Q. Okay. And do you hold any licenses in Rhode
14 Island?
15 A. Yes.
16 Q. What licenses?
17 A. Producer's license.
18 Q. Is that the --
19 A. Equivalent to a broker's license.
20 Q. I -- I'm just curious. Is that the term in
21 Rhode Island?
22 A. Producer's license. Yes.
23 Q. Massachusetts, it would be a -- a broker's
24 license?

19

1 A. I'm not really sure.
2 Q. Okay.
3 A. It may be. I -- I -- I am licensed in
4 Massachusetts, but I don't even know the term.
5 Q. Okay. I don't think it's germane. Well, maybe
6 it is. But . . .
7 Now, you heard Mr. McVey's testimony
8 concerning the -- his opinion as to the scope
9 of P&I coverage available under a -- a port
10 risk cover?
11 A. I did.
12 Q. What is -- what is your understanding,
13 Mr. Scola, of the scope of P&I cover that is
14 available under a port risk policy?
15 A. Under a -- in my experience, under a normal
16 port risk policy, there is no need for crew
17 coverage. And, hence, there is no crew P&I
18 coverage under a port risk policy under normal
19 situations.
20 Q. Now, you said "a normal port risk policy." How
21 about a situation where you have a hull and P&I
22 policy in the form of the policy which has been
23 marked as Exhibit 7?
24 A. Correct. Yeah.

20

1 Q. Now, the last page of Exhibit 7 has an
2 endorsement, Endorsement No. 3, which covers
3 for port risk only from August 13, 2003 to
4 December 21st, 2003.
5 A. Yes.
6 Q. If Endorsement 3 had never been issued and the
7 policy terms and provisions were as set out in
8 Exhibit 7 with the exception of Endorsement 3,
9 would there have been what has been referred to
10 in Mr. McVey's deposition as crew P&I cover
11 available under the policy?
12 MR. LANGER: Objection to the extent it
13 calls for a legal conclusion.
14 A. Can you repeat that question again now?
15 Q. Sure. Exhibit 7 is -- has been testified to, a
16 copy of Policy No. 3 --
17 A. Uh-huh.
18 Q. -- and my question is, had Endorsement 3 never
19 been issued -- I understand it did; I'm
20 changing it --
21 A. Okay.
22 Q. -- that wasn't part of the policy terms and
23 provisions -- would there have been what has
24 been referred to as crew P&I coverage available

21

1 under the policy?
2 MR. LANGER: The same objection.
3 A. All right. Let me -- let me answer that
4 question. Had circumstances been totally
5 different --
6 Q. Yes.
7 A. -- there were no phone calls made --
8 Q. Yes.
9 A. -- there were no endorsement -- there was no
10 endorsement issued, the policy was renewed in
11 August as an operational policy, it would have
12 been an operational policy.
13 Q. And by "operational policy," you mean a policy
14 that the vessel could have gone out fishing?
15 A. Could have gone out fishing.
16 Q. Under that circumstance, under the language as
17 set forth in Exhibit 7, there would have been
18 coverage for the crew?
19 MR. LANGER: The same objection.
20 A. Under an operational policy, there would have
21 been coverage for the crew.
22 Q. Well, if one -- if -- if Exhibit 7 did not have
23 Exhibit -- Endorsement No. 3 --
24 A. And it was an operational policy.

22

1 Q. -- would it be regarded as an operational
2 policy by you?
3 A. Yes.
4 Q. All right. And Endorsement 3 was issued. And
5 I'm -- I'd like to give you Exhibit 7 --
6 MR. LANGER: He has it --
7 A. I have it.
8 MR. LANGER: -- in front of him.
9 Q. -- and ask you if you could show me where in
10 the policy language and endorsements it states
11 that there is no coverage for crew?
12 A. For the time period August 13th, 2003 to
13 December 21st, 2003, the fishing vessel is
14 covered for port risk only, no fishing.
15 MR. ABROMOVITZ: Are you looking at --
16 THE WITNESS: At this endorsement.
17 MR. ABROMOVITZ: -- Exhibit No. 7?
18 THE WITNESS: Yes.
19 MR. ABROMOVITZ: Endorsement No. 3 to
20 Exhibit 7?
21 THE WITNESS: Yes.
22 MR. ABROMOVITZ: Okay.
23 THE WITNESS: Yeah.
24 Q. I understand that's what Endorsement No. 3

23

1 says. But I asked you something different.
2 Where in the policy does it say there is no
3 coverage for crew?
4 A. You mean, where is it written there is no
5 crew -- quote, there is no crew coverage or
6 words to that effect?
7 Q. Yes.
8 A. The -- there -- there are no words written to
9 that effect in this policy. There is only this
10 endorsement that reflects it was on port risk.
11 Q. I see. So you're saying, by virtue -- and
12 we're just restricting ourselves to the
13 policy now -- by virtue of the fact that
14 there's an endorsement that places the vessel
15 on port risk for a period of time, that is
16 where one would look for the conclusion that
17 there is no crew cover?
18 A. That, and the fact, from what I heard from
19 Mr. McVey's testimony, that the client
20 requested that there be no crew coverage and
21 the boat be put on port risk.
22 Q. Well, I understand that that's what Mr. McVey
23 says. But I'm asking in terms of the policy
24 itself, the language of the policy that was in

24

1 effect at the time of --
2 A. The -- the only --
3 Q. -- Mr. Russo's injury.
4 A. The only reference I can make to no crew
5 coverage is the fact that it's on port risk. I
6 can -- I can make no reference to other facts,
7 such as the boat cannot go offshore. It
8 doesn't say that in this endorsement, but it
9 certainly is implied in this endorsement. It
10 simply says "NO FISHING."
11 Q. Well, I'm not talking about -- now -- now,
12 that's a navigational warranty, isn't it, what
13 would be referred to as a navigational
14 warranty?
15 A. It's another warranty, yes, a navigational --
16 Q. All right.
17 A. -- warranty. Yeah.
18 Q. And by navigational warranty and -- you
19 understand that to mean the geographical area
20 that the vessel was permitted to travel in?
21 A. Yes.
22 Q. And if one were to go through the various pages
23 of this policy, you would find a navigational
24 warranty limiting the geographical area,

25

1 wouldn't you?
2 A. You would.
3 Q. All right. That would be spelled out; is that
4 correct?
5 A. It would be spelled out where the boat could --
6 how far offshore the boat could fish --
7 Q. All right.
8 A. -- yes, when it was operational.
9 Q. Okay.
10 A. Yeah.
11 Q. Now, there's also spelled out in here something
12 referred to as a crew warranty.
13 A. There is.
14 Q. In fact, the crew warranty is spelled out as
15 warranted three-four crew, inclu- -- excluding
16 owners?
17 A. Yes.
18 Q. Okay. And am I correct that nowhere in
19 Exhibit 7 is there any express language saying
20 the crew warranty is now changed to zero?
21 A. There is no express language that says the crew
22 warranty is changed to zero.
23 Q. All right. What we have is language that says
24 "in consideration of a return premium of \$3,117

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1 that Mary & Josephine is covered for Port Risk
2 only-no fishing effective August 13, 2003 to
3 December 21, 2003."
4 A. Uh-huh.
5 Q. Is that right?
6 A. That's what we have.
7 Q. Okay. And the language that should put someone
8 on notice that there's no crew cover is the
9 fact that it's on port risk?
10 A. Yes.
11 MR. PETTINGELL: Have we got Exhibits 4
12 and 5?
13 MR. ABROMOVITZ: The originals? They
14 should be there.
15 MR. PETTINGELL: Well, I want 5 and 6. I'm
16 sorry.
17 THE WITNESS: I have them. Yeah.
18 MR. PETTINGELL: 5 and 6.
19 THE WITNESS: Yeah.
20 MR. PETTINGELL: Can I peek at them?
21 'Cause I can't --
22 THE WITNESS: Yes. You can.
23 MR. PETTINGELL: -- can't find my copies.
24 Q. Now, Exhibits 5 and 6 --

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1 MR. PETTINGELL: Off the record.
2 (A brief discussion was held off the
3 record.)
4 Q. Exhibits 5 and 6 are endorsements that were
5 made in -- made to Policy 2. Would you agree
6 with that?
7 A. Yes. I -- honestly, I don't -- I don't know
8 about 5. Oh, yes. It has a policy number on
9 it. Yeah.
10 Q. Right. Policy 1 was a Fairfield policy.
11 A. Yeah. Okay.
12 Q. And this is a Sunderland policy, this being
13 Policy 2?
14 A. North American Specialty.
15 Q. I'm sorry.
16 A. Yes. Same -- same.
17 Q. I misspoke.
18 A. I mean, I --
19 Q. Well, Fairfield --
20 A. -- we'll treat them as the same.
21 Q. Yeah. I'm sorry. NAS. Now, if you look at
22 Exhibit 6 --
23 A. Yeah.
24 Q. -- this also places the Mary & Josephine on

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1 port risk, doesn't it?
2 A. Yes.
3 Q. And it adds to the policy a particular port
4 risk endorsement policy form, American
5 Institute Port Risk Endorsement dated
6 January 18, 1970?
7 A. Yes.
8 Q. And, in fact, Exhibit 5, if you look at it, is
9 that particular form?
10 A. Yes.
11 Q. Now, there's also -- well, reading down, "The
12 Navigation Limit is amended to: PORT RISK
13 ONLY. WARRANTED NO FISHING."
14 A. Where -- are you on --
15 Q. Exhibit 6.
16 A. -- 6 --
17 Q. Yes.
18 A. -- again? Okay.
19 Q. Correct?
20 A. Yes.
21 Q. And then we have something else that's changed
22 in the policy by virtue of -- of Exhibit 6.
23 And that's "The Crew Complement is amended to:
24 a Crew of 1."

29

1 A. I see that.
2 Q. Is that correct?
3 A. Yes.
4 Q. And Mr. McVey has testified that that language
5 reflecting a change in the crew complement is
6 not something that would automatically appear
7 as a matter of course in an endorsement that
8 was changing port risk. That's something --
9 in -- in effect, two things are being done with
10 a single endorsement. Would you agree with
11 that?
12 A. Two things are being done with a single
13 endorsement?
14 Q. Yes.
15 A. Would you tell me what those are?
16 Q. Policy is -- coverage was amended to go from
17 operational to port risk.
18 A. Correct.
19 Q. And the crew compliment was amended.
20 A. Yes.
21 Q. In Exhibit 7, if you go to Endorsement 3 to
22 Exhibit 7, there's only one policy change being
23 taken care of in that endorsement. And that's
24 to go from operational to port risk.

30

1 A. Correct.
2 Q. And, sometimes, when you issue an endorsement
3 on behalf of North American, more than one
4 policy change can appear in a single
5 endorsement; is that correct?
6 A. It did, in this one.
7 Q. Okay. By "this one," you're referring to --
8 A. I'm referring to No. 6.
9 Q. Exhibit 6?
10 A. Yeah.
11 Q. All right. Come down a little further in
12 Exhibit 6, and one, two, three, fourth line up
13 from the bottom, it sa- -- states, "ALL OTHER
14 TERMS AND CONDITIONS REMAIN UNCHANGED." Do you
15 see that language?
16 A. Yes.
17 Q. What's that language mean?
18 MR. LANGER: Objection to the extent it
19 seeks a legal conclusion.
20 A. In my opinion, what that means is that all the
21 terms and conditions of Section 1 and 2 are
22 unchanged.
23 Q. And what is Section 1 and 2? Is that the
24 policy itself?

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1 A. The policy. Yes.
2 Q. So where the owner of the policy -- owner of
3 the vessel is listed on the policy or the
4 amount of coverage, dollar amount of hull
5 coverage or dollar amount of P&I coverage
6 appears, they're not changed by virtue of
7 Endorsement 6?
8 A. That's right. The hull coverage wouldn't be
9 changed.
10 Q. And --
11 A. The dollar amount of the hull coverage, I --
12 Q. Right.
13 A. -- should say. Yeah.
14 Q. And the dollar amount of the P&I coverage
15 wouldn't change?
16 A. Correct.
17 Q. All right. And, therefore, Mr. Scola, would
18 you agree that if you didn't have the second
19 change reflected in Exhibit 6 --
20 A. The second one being?
21 Q. "The Crew Complement is amended to: 'Crew of 1
22 excluding Owners.'" I realize that appeared
23 there.
24 A. Uh-huh.

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1 Q. But if that language did not appear --
2 A. Yeah.
3 Q. -- everything else on Exhibit 6, with the
4 exception of those two lines, is the same?
5 MR. LANGER: Objection.
6 Q. I want you to assume that.
7 MR. LANGER: Objection to the form of the
8 question.
9 A. Could you -- do you --
10 Q. All right.
11 A. Could you repeat that question for me?
12 Q. Look at Exhibit 6.
13 A. Yeah.
14 Q. If the two lines that say "The Crew Complement
15 is amended to Crew of 1 excluding Owners," do
16 you see that?
17 A. Yeah.
18 Q. If that did not appear on Exhibit 6, it wasn't
19 there --
20 A. Yeah.
21 Q. -- just a big blank spot --
22 A. Yeah.
23 Q. -- right there --
24 A. Yeah.

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1 Q. -- and all the other language remained the
2 same -- are you with me?
3 A. I'm with you.
4 Q. All right. Now, you have the language that
5 says "This policy is hereby amended from
6 Operational to Port Risk. Adding: American
7 Institute Port Risk Endorsement (01/18/70),"
8 which is Exhibit 5.
9 A. Uh-huh.
10 Q. All right. You also have the language that
11 says "Endorsement Section I and II, ALL OTHER
12 TERMS AND CONDITIONS REMAIN UNCHANGED."
13 Doesn't that mean that the crew warranty would
14 remain unchanged?
15 MR. LANGER: Objection.
16 A. Not in my opinion.
17 Q. And why is that, sir?
18 A. Because the -- this endorsement puts the vessel
19 on port risk.
20 Q. And where is the language that says, by virtue
21 of going on port risk, there is no -- I'll use
22 the phrase --
23 A. I -- I --
24 Q. -- "P" -- let -- let me finish.

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1 A. I'm sorry. Go ahead.
2 Q. -- "crew P&I cover"?
3 A. I don't see language to that effect on here.
4 However, in -- in -- just in common knowledge
5 of the reason for port risk and what people use
6 it for and what know it to be, there is no need
7 for crew coverage on a port risk vessel unless
8 there are unusual circumstances. I go back to
9 that again. That is why the -- it says there's
10 a crew of one covered on here to add that
11 coverage in what otherwise would be considered
12 by the underwriter to be no crew.
13 Q. Well, you say that's common knowledge in the
14 industry?
15 A. It is, to me and people I know.
16 Q. Meaning?
17 A. I -- I can't speak for everyone in the
18 industry, obviously. But, I -- I mean, when a
19 client calls to put his boat on port risk, he,
20 typically, will take off all the crew to save
21 money because he has no need for crew. He's
22 not doing anything --
23 Q. I see.
24 A. -- to that vessel.

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1 Q. Well, let's explore that a little bit. You've
2 been working in the insurance industry as a
3 broker with OMI or a predecessor since 1985?
4 A. Yes.
5 Q. And is it fair to say your knowledge and
6 understanding of coverage under marine policies
7 stems from things you've learned over the
8 period of time from 1985 to the present, the
9 last 20 years, I guess?
10 A. Yes.
11 Q. All right. Are you suggesting that all vessel
12 owners know as much about insurance, marine
13 insurance, as you do?
14 MR. LANGER: Objection to the form of the
15 question.
16 A. That's not at all what I'm suggesting.
17 Q. All right.
18 A. Not at all.
19 Q. So --
20 A. But -- but, however --
21 Q. Well --
22 MR. LANGER: Let him fin- -- let him finish
23 his answer. Let him finish the answer.
24 Q. Not at all what you're suggesting. Is there

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1 something else you were suggesting?
2 A. I was suggesting that it's common knowledge
3 that most people would understand how and why
4 to put a vessel on port risk, what the reason
5 for it is, and why they know why they would
6 want to do it.
7 Q. Isn't one of the reasons that vessel owners put
8 their vessels on port risk because they're not
9 going to be going out fishing?
10 A. Yes.
11 Q. Isn't it true, Mr. Scola, that the exposure to
12 someone being hurt on a vessel while out
13 conducting fishing ex- -- exercises or on an
14 operational vessel is greater than on a vessel
15 tied up to the pier?
16 A. I would say that the exposure is greater while
17 out fishing. There are more chances of things
18 going wrong. However, you can certainly get
19 hurt, when you're on a vessel doing repairs,
20 very badly.
21 Q. Isn't one of the reasons that a vessel owner
22 might tie a -- might request a vessel go on
23 port risk because they have repairs that they
24 want to conduct, and they're looking to save

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1 money because there's a reduced premium because
2 the ex- -- the risk is not as great?
3 A. That may be a reason that a vessel owner would
4 want to go on port risk. That's not,
5 necessarily, a reason why an underwriter would
6 want to place that vessel on --
7 Q. Okay.
8 A. -- port risk.
9 Q. Well, I'm talking about --
10 A. Oh, I -- I'm telling you what the real world is
11 like though.
12 Q. Please. I'm speaking about what a vessel owner
13 might want to do. And you understand -- I
14 think you've answered that you understand that
15 that, certainly, is something that vessel
16 owners might want?
17 A. Yes.
18 Q. If a vessel owner is working on a vessel tied
19 up at port risk, sometimes, vessel owners have
20 repairmen come aboard: welders, things of that
21 nature.
22 A. They do.
23 Q. And, frequently, to save money, vessel owners
24 have the crew come aboard and do repairs

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1 themselves?
2 A. They will. Yeah.
3 Q. I mean, that's not --
4 A. Not unusual.
5 Q. -- unheard of?
6 A. No.
7 Q. Okay.
8 MR. PETTINGELL: Just a second, please.
9 (Brief recess taken.)
10 BY MR. PETTINGELL:
11 Q. You're here in response to the notice of
12 deposition duces tecum, and you're being
13 offered as NAS's designate with respect to
14 Paragraph 6. One of the things it asks you to
15 bring with you to the deposition is "Any and
16 all writings of whatever kind or nature that
17 define the term 'port risk coverage' as same as
18 being relied upon by Plaintiff" -- that's
19 NAS -- "in its Complaint." Have you brought
20 any documents with you?
21 A. I haven't.
22 MR. PETTINGELL: Mr. Langer, have you got
23 any documents?
24 MR. LANGER: I'm not aware of any written

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1 definitions of port risk that explain as -- as
2 defined by Mr. Scola --
3 MR. PETTINGELL: Okay.
4 MR. LANGER: -- in his answers to your
5 questions.
6 Q. Are you aware of any such documents, sir?
7 A. I'm not.
8 Q. Okay.
9 MR. PETTINGELL: I think, with that, I'm
10 going to pass the witness. I told you we'd be
11 short.
12 MR. ABROMOVITZ: Just one moment.
13 CROSS-EXAMINATION
14 BY MR. ABROMOVITZ:
15 Q. Mr. Scola, I think you testified earlier in the
16 deposition that, once a request for an
17 endorsement or change to the insurance policy
18 came from the -- the insured -- in this case, a
19 vessel owner -- typically, what would happen
20 is, a letter would go out to the insured
21 confirming any communications regarding a
22 proposed change to coverage; is that correct?
23 A. Yes.
24 Q. Did one go out in this case to the Mary &

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1 Josephine Corporation?
2 A. I believe I saw one to that effect. Yes.
3 Q. And this would be an endorsement -- now, I'm
4 referring specifically to the policy year
5 August '03 to August '04. Are you saying that
6 there was a letter that was -- went from your
7 office to the owners of the Mary & Jo- -- Mary
8 & Josephine Corporation sometime in that policy
9 period in connection with a requested change?
10 A. I seem to recall -- and I'm su- -- we -- we
11 probably have one here in the room somewhere --
12 a letter that was sent by Lynn Houde in
13 October, on the day or the day after she spoke
14 with Matt Russo, regarding placing this vessel
15 on port risk from -- for a couple of different
16 time periods.
17 But I'm not -- I -- I can't be specific.
18 But I -- I think one went from May to August,
19 and the other went from August forward. But
20 it's -- it's here somewhere, if you want to see
21 it.
22 Q. Okay. Have you seen anything in any of these
23 letters that indicate to the vessel owner, Mary
24 & Josephine Corporation, that when the vessel

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1 was put on port risk, there was no crew P&I
2 coverage, any words to that effect in the body
3 of any of these letters?
4 A. No. I don't recall seeing that there -- there
5 was no crew P&I coverage. The only wording I
6 remember is that it was -- it was requested to
7 be put on port risk.
8 Q. Prior to December 3rd, 2003, the date of Matt
9 Russo's accident, had you ever had any
10 conversations with him whatsoever?
11 A. Not that I can recall, no.
12 Q. Prior to December 3rd, 2003, had you ever had
13 any conversations with Sal Russo, Matt's
14 father?
15 A. Not that I can recall.
16 Q. Prior to December 3rd, 2003, had you had any
17 conversations with anybody on behalf of the
18 Mary & Josephine Corporation?
19 A. No, not -- I don't recall speaking with anyone
20 from that corporation.
21 Q. Would it be fair to say that prior to
22 December 3rd, 2003, you had no written
23 communication with anybody on behalf of the
24 Mary & Josephine Corporation, you, yourself?

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1 A. Not to my knowledge, Mr. Abromovitz. I mean,
2 it -- it's possible. I don't recall everything
3 that took place. But I don't remember this, if
4 there was anything.
5 Q. Do you remember any exchange of e-mails between
6 you and anybody on behalf of the Mary &
7 Josephine Corporation prior to December 3rd --
8 December -- December 3rd, 2003?
9 A. No. I -- I don't remember communicating with
10 anyone from Mary & Josephine Corporation.
11 Q. Prior to December 3rd, 2003, did you have any
12 communication with anybody from the Russo
13 family concerning vessels other than the
14 fishing vessel Mary & Josephine?
15 A. I believe I -- I had conversations with either
16 Matt's brother or cousin -- I'm not sure who it
17 was -- about a different vessel altogether that
18 wasn't part of that corporation.
19 Q. Okay.
20 A. Yeah.
21 Q. That was owned by somebody in the Russo family?
22 A. Someone else. Yes.
23 Q. Do you remember the essence of any of these
24 conversations?

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1 A. We had insurance on another vessel.
2 Q. At any point in time, in connection with
3 conversations with anyone else from the Russo
4 family relative to vessels other than the Mary
5 & Josephine, did you ever communicate to any of
6 these other persons your understanding of what
7 a vessel being on port risk did to the
8 existence of crew P&I coverage?
9 A. If anyone put a vessel on port risk, anyone --
10 either in this family or outside of this
11 family -- and they asked me to put a vessel on
12 port risk, I would have explained the situation
13 to them at the time as to what it was.
14 Q. Were any of the other Russo vessels -- strike
15 that. Were any of the other vessels owned or
16 operated by the Russo family ever put on port
17 risk other than the fishing vessel Mary &
18 Josephine?
19 A. I'm sorry. I don't -- I don't know. Maybe.
20 Maybe not. I just don't know.
21 Q. Do you have any recollection prior to
22 December 3rd, 2003, in connection with any
23 vessel owned or operated by a member of the
24 Russo family, of advising somebody in writing

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1 that if the vessel went on port risk, there was
2 no crew P&I coverage?
3 A. I have no recollection of that.
4 Q. Does your office maintain separate files from
5 the -- for the vessels insured by -- through
6 OMI other than the fishing vessel Mary &
7 Josephine?
8 A. I -- I'm not sure I understand the question.
9 But I think I -- I know where you're getting
10 at. We maintain a separate file for each
11 vessel that is insured by us.
12 Q. Have you had occasion prior to today of looking
13 in the other files -- this is for vessels owned
14 or operated by the Russo family other than the
15 Mary & Josephine -- to determine if there's any
16 correspondence in there to anybody from the
17 Mary & Joseph- -- anybody from the Russo
18 family, informing them that if a vessel's on
19 port risk coverage, there is no P&I crew
20 coverage?
21 A. I did not have occasion to look.
22 Q. And if either of those vessels -- I'm going to
23 ask you to assume there were two other vessels
24 that were operated by a member of the Russo

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1 family prior to December 2nd, 2003 -- if those
2 vessels were ever on port risk -- placed on
3 port risk, the documentation in connection with
4 placing the vessel on port risk would be in
5 those respective files?
6 A. It should be.
7 Q. Thank you. In connection with the last page of
8 Exhibit 7, the port risk endorsement signed by
9 Mr. Ostrow --
10 A. Uh-huh. Yes.
11 Q. -- do you know if, at that time -- this is as
12 of February '04 -- there was anything in
13 writing concerning OMI's arrangement with
14 Sunderland or NAS that granted Mr. Ostrow
15 authority to sign as their authorized
16 representative?
17 A. I believe your question asks me if there was
18 anything in writing?
19 Q. Yeah.
20 A. I don't think so.
21 Q. Okay. What is your understanding presently as
22 to the relationship between Sunderland and
23 North American Specialties, Sunderland Marine
24 and North American Specialties?

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1 A. North American Specialty has some type of an
2 arrangement, to -- to my knowledge, within the
3 state of Massachusetts. That's the only state
4 that I know of. There may be others -- because
5 I don't do business all over the United States
6 with Sunderland -- where policies are issued
7 using the name of North American Specialty.
8 To the extent of how that o- -- how that
9 operates, I really don't understand it or have
10 any knowledge of -- of the business arrangement
11 or the intricacies or even, actually, why that
12 is. I assume it's for some legal reason that
13 Sunderland does this.
14 Q. Does OMI have a direct relationship with North
15 American Specialties?
16 A. We do have to communicate with North American
17 Specialties as far as having things approved,
18 certain things that they need to see ahead of
19 time. I believe they get copied on things that
20 we send Sunderland.
21 Q. And I think you said very early in your
22 testimony today that the arrangement that OMI
23 has is -- pursuant to this written arrangement
24 with Sunderland is, you have the right or

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1 the -- how did you express it -- the
2 opportunity to present business to Sunderland?
3 A. That's right.
4 Q. Okay. When you present business to Sunderland
5 with reference to a vessel operating under
6 Massachusetts, is it your understanding that
7 you're also presenting a business opportunity
8 to North American Specialties?
9 A. I -- I don't know what their arrangement is.
10 Q. When you present a business opportunity to
11 insure a commercial fishing vessel to
12 Sunderland at present, if Sunderland accepts
13 the opportunity, do they always write the risk
14 through North American Specialties?
15 A. Within the state of Massachusetts.
16 Q. And who does Sunderland use through vessels
17 operating out of Rhode Island?
18 A. They -- they use themselves.
19 Q. They have their own company, Sunderland Marine?
20 A. Sunderland Marine.
21 Q. Okay.
22 A. Yes.
23 Q. I don't mean to beat this to death. But I
24 understand from your testimony that you cannot

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1 refer to any written materials from any source
2 that supports your understanding that when a
3 vessel is placed on port risk, there is no crew
4 P&I coverage. Correct?
5 A. You know, I probably didn't exhaust every
6 avenue to see -- to -- to read everything
7 that's out there on that. Nothing comes to
8 mind in writing. As I said in my testimony,
9 it's, pretty much, common knowledge that a --
10 an underwriter who accepts port risk just
11 naturally knows that he's not accepting crew
12 coverage with that.
13 Q. Common knowledge among whom?
14 A. Common knowledge among underwriters, common
15 knowledge among claim people, common knowledge
16 among agents and brokers, common knowledge
17 among fishermen who own vessels who place them
18 on port risk.
19 Q. But you, yourself, prior to December 2nd or
20 December 3rd, 19- -- strike that. You
21 yourself, prior to December 3rd, 2003, have no
22 personal knowledge of what Matt Russo
23 understood the insurance situation would be as
24 of that date, do you, sir? You never spoke to

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1 him?
2 A. I never spoke with him. So I guess I don't
3 have knowledge. But I -- certainly, be -- in
4 preparation for this, I looked through the file
5 to see what his -- as a client, you know, what
6 he did with his account. And it was on-and-off
7 port risk without crew many occasions and --
8 and on with -- with one crew on another
9 occasion. So I assume that someone with that
10 much experience knows what's going on. I could
11 be wrong, but I just have to assume that.
12 Q. Is it fair to say that, prior to the port risk
13 endorsement of February 16th, 2004 to Exhibit
14 No. 7, the policy at issue in this case --
15 A. I'm with you. Yeah.
16 Q. -- there was no written endorsement in the file
17 as of December 3rd, 2003?
18 A. There was no written endorsement with respect
19 to port risk --
20 Q. Yes.
21 A. -- for that policy -- Policy Year 3.
22 Q. Yes.
23 A. That's correct.
24 Q. Okay. So let me just make sure this -- we got

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1 this clear on the record.
2 A. Yeah.
3 Q. You agree with me, do you not, sir, that prior
4 to Matt Russo's accident December 3rd, 2003,
5 there was no written endorsement put -- placing
6 this vessel on port risk that was part and
7 parcel to the insurance policy at issue in this
8 case? Do you agree with that, sir?
9 A. I agree. And I -- I also extend that there was
10 a letter that was sent to him, showing that he
11 asked to have it placed on port risk.
12 Q. There was --
13 A. And that is --
14 Q. -- a letter that --
15 A. That was in the file.
16 Q. -- that went out from Ms. Houde?
17 A. That's correct.
18 Q. Well, we'll chat with her about that.
19 MR. PETTINGELL: Well, off the record for a
20 second.
21 (A brief discussion was held off the
22 record.)
23 (Letter to Matt Russo from Lynanne Houde
24 dated 10/3/03 marked as Scola Exhibit

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1 No. 8.)
2 (Letter to Matt Russo from Lynanne Houde
3 dated 12/18/02 marked as Scola Exhibit
4 No. 9.)
5 Q. Mr. Scola, with reference to Exhibit No. 8,
6 which is Ms. Houde's letter of October 3rd,
7 2003, is that the letter that you referred
8 to --
9 A. Yes.
10 Q. Let me get it out, please.
11 A. Oh, I'm sorry.
12 Q. Is that the letter that you were making
13 reference to when you indicated that you
14 believe you saw, in the file, a letter going to
15 Mr. Russo confirming his request that the
16 policy -- that the vessel be placed back on
17 port risk coverage and the policy amended?
18 A. Yes.
19 Q. Okay. And then, I understand from Mr. Langer's
20 testimony that, sometime after December 2- --
21 or as Mr. Langer's off-the-record statement
22 that, sometime after December 12th, 2003, the
23 date the vessel -- the vessel again became
24 operational was handwritten in on Exhibit

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1 No. 8, 12/21/03?
2 A. Yes. It must have been handwritten in 12/21 or
3 after.
4 MR. ABROMOVITZ: Okay. Thank you. That's
5 all I have.
6 REDIRECT EXAMINATION
7 BY MR. PETTINGELL:
8 Q. Just a few more, Mr. Scola.
9 MR. PETTINGELL: Oh, I'm sorry, Len, unless
10 you want to go first, whatever your pleasure
11 is.
12 MR. LANGER: I have -- I have no questions.
13 I'm beginning to feel a little like a ping-pong
14 ball between the -- the two defendants. But
15 I'll reserve my comments until --
16 MR. PETTINGELL: Okay. Well, it might make
17 sense to go at the end, if you wish.
18 Q. But, anyway, coming back to Exhibit 9 -- I'm
19 sorry -- Exhibit 8 --
20 MR. PETTINGELL: Oh. Something's wrong
21 here. Oh, I see what I did.
22 Q. -- this is the only writing that you are aware
23 of running from OMI to Mary & Josephine Corp.
24 that references, I guess, by extension, that

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1 there's no crew warranty because it says the
2 vessel's going on port risk?
3 A. That, and another letter that went out after
4 that as a reminder that was --
5 Q. All right.
6 A. -- the same letter again. Yeah.
7 Q. Okay. And other than the fact that it states
8 that the vessel's on port risk, it, certainly,
9 doesn't contain any language, express language,
10 saying, and there's no crew P&I coverage?
11 MR. LANGER: Objection. The document
12 speaks for itself.
13 A. It doesn't say that -- the words you used.
14 Q. And you're unaware of any writing to Mary &
15 Josephine Corp. that does state in clear and
16 concise language that, during the period the
17 vessel is on port risk, there will be no crew
18 P&I coverage?
19 A. I'm unaware of anything in writing. Correct.
20 Q. All right. And I think you said it's your
21 understanding that that's common knowledge?
22 A. I did say that.
23 Q. But you'll also agree you have no knowledge of
24 what Mr. Russo's understanding of insurance is?

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1 A. I don't believe that's what I said.
2 Q. Well, I'm asking you.
3 A. We --
4 Q. Do you, sir, know what Mr. Russo's knowledge of
5 the coverage available under port risk
6 insurance policies was at the time that
7 Exhibit 8 was sent out?
8 A. I never spoke with him about it. So I really
9 shouldn't say anything. I'm only reflecting
10 upon what I see he has done with his insurance
11 coverage by going on port risk without crew,
12 with crew over quite a few -- probably more
13 than any client I know in that short a period
14 of time.
15 Q. Mr. Russo would tie his boat up and reduce the
16 size of the crew on the --
17 A. Eliminate the crew.
18 Q. -- on the vessel during --
19 A. Eliminate the crew.
20 Q. -- the period -- we have to talk one at a time.
21 A. I'm sorry.
22 Q. -- would reduce the size of the crew during the
23 period that the vessel was tied up?
24 A. Yes.

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1 Q. And it's your recollection that, at times, he
2 reduced it to zero?
3 A. Yes.
4 Q. Do you know what policy year he did that in,
5 sir, reduced it to zero?
6 A. I -- I cannot remember. I mean, I could look
7 it up with some research. I could tell you.
8 Q. Are you certain that he ever re- -- that --
9 that he reduced it to zero for any of the
10 policies?
11 A. To answer accurately, he was given port risk
12 credits with zero crew coverage at times and,
13 at other times, with crew coverage.
14 Q. Other times, he reduced it to less than full
15 crew coverage?
16 A. I don't know if he did, or it was suggested by
17 Mr. McVey. I'm not sure how that worked.
18 Q. Well, ultimately, the scope of the coverage
19 that Mr. Russo or Mary & Josephine Corporation
20 was requesting was for them to decide, wasn't
21 it?
22 MR. LANGER: Can you repeat that question?
23 THE WITNESS: Could you read that one to me
24 again?

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1 Q. Ultimately --
2 A. Yeah.
3 Q. -- the scope of coverage that Mary and
4 Josephine Corporation was requesting was for
5 them to decide, wasn't it?
6 A. Was for Mary & Josephine to decide.
7 Q. Yes.
8 A. It was their decision.
9 Q. Right.
10 A. Yes.
11 Q. The fact that somebody suggested that you might
12 want to keep one man on didn't mean they had to
13 follow that advice?
14 A. They did not.
15 Q. Okay. And other than the fact that Mary &
16 Josephine Corporation appeared to have a habit
17 of putting their vessel on port risk and making
18 changes in the size of the crew, you don't have
19 any knowledge of what Mr. Russo's awareness of
20 the scope of coverage available under port risk
21 was, do you?
22 A. You know, I -- I don't know how you can say
23 that af- -- after seeing what was done with his
24 policy by him.

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1 Q. Well --
2 A. I -- I have to assume that what he -- he is
3 doing, he's doing with his knowledge of why
4 he's doing it. If he -- you know, if he was
5 doing it strictly at random each time he did
6 it, I just can't believe that.
7 Q. I think Mr. McVey testified that it was his
8 impression that changes made by Mr. Russo on --
9 or was requesting on behalf of his corporation
10 were to save money.
11 A. He did testify to that. Yes.
12 Q. All right. And based upon your review of the
13 files, Mary & Josephine Corporation was
14 receiving return premiums --
15 A. It was.
16 Q. -- during the period that the vessel was on
17 port risk?
18 A. Yes.
19 Q. So if, in fact, Mr. Russo was trying to save
20 money for his corporation by placing the vessel
21 on port risk, it would appear he was
22 successful?
23 A. It would appear.
24 Q. All right. But anywhere in the files

1 Q. -- based upon your 20 years' practical
2 experience in the industry?
3 A. Yeah.
4 Q. And if we're -- isn't it true you don't know,
5 as you sit here today, what scope of knowledge
6 Mr. Russo had back in 200- -- August of -- or
7 October of 2003 with respect to the scope of
8 coverage available under a port risk --
9 MR. LANGER: Objection.
10 Q. -- cover?
11 MR. LANGER: Objection. It's been asked
12 and answered now three times. He's explained
13 each time what his answer was and why he
14 believed that.
15 MR. PETTINGELL: You've objected. Will you
16 please stop interrupting?
17 MR. LANGER: I -- I'm going to interrupt,
18 Dick, because you ask him the same question
19 again and again. He gives you the same answer
20 again.
21 MR. PETTINGELL: Well --
22 MR. LANGER: And then you ask the same
23 question.
24 MR. PETTINGELL: Humor me.

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1 pertaining to the three policies of insurance
2 issued to Mary & Josephine Corporation, is
3 there anything in writing to the effect that,
4 during the period the policy was -- the vessel
5 is on port risk, there is no coverage for crew
6 P&I? Does that appear anywhere?
7 MR. LANGER: Objection. It's been asked
8 and answered. Go ahead.
9 A. I've answered that question in relation to
10 Policy No. 3.
11 Q. Okay.
12 A. I -- I'm not sure about Policy 1 and 2. I just
13 haven't memorized everything that's in there.
14 Q. Do you regard yourself as an expert in
15 insurance, sir?
16 A. No.
17 Q. Do you regard yourself as an expert on the
18 scope of coverage available under a port risk
19 cover?
20 A. I don't regard myself as an expert. No. I
21 don't teach marine insurance.
22 Q. All right. You're aware -- well, you have your
23 understanding of the scope of such coverage --
24 A. Yes. Yeah.

1 MR. LANGER: I'm not going to humor you
2 much longer 'cause, you know, we have one more
3 witness to do.
4 MR. PETTINGELL: I'm aware of that.
5 MR. LANGER: And you're asking the same
6 question again and again.
7 Q. And I'd like an answer.
8 A. I believe, from what Mr. Russo requested us to
9 do or requested Mr. McVey to do on different
10 occasions, that he was aware of the coverage or
11 the lack of coverage that he had when he was
12 doing it. That is my answer.
13 Q. Okay. So based upon the fact that he was
14 making those changes, you're making an
15 assumption as to the scope of his knowledge?
16 A. I'm making an assumption. I did not speak to
17 him directly.
18 Q. Okay. Fair enough. And, in Exhibit 8, we have
19 the written confirmation going out to Mary &
20 Josephine Corp. that the vessel's going on port
21 risk. And, from that, based upon your
22 assumption as to Mr. Russo's knowledge, you
23 infer that he should have known that there was
24 no crew P&I cover?

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1 A. Yes.
2 Q. I'd like to show you another document, which
3 has previously been marked as Exhibit 9. Do
4 you have that in front of you, sir?
5 A. I have that right here.
6 Q. Why don't you take a moment and read it.
7 A. Okay.
8 (Pause.)
9 A. Yeah.
10 Q. Have you had a chance to read it?
11 A. Yeah.
12 Q. And would you agree that this is a letter dated
13 December 18, 2002 which pertains to Policy
14 No. 2, the prior policy?
15 A. Yeah. Yeah.
16 Q. Yes?
17 A. Yes.
18 Q. Okay. And Exhibit 9 is a letter from Ms. Houde
19 to Mr. Russo at Mary & Josephine Corp.
20 explaining changes to the policy?
21 A. Yes.
22 Q. And that letter pertains to the vessel going on
23 port risk?
24 A. Yes.

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1 Q. And that letter also pertains to a change in
2 the size of the crew for which there is P&I
3 coverage under the policy while it's on port
4 risk?
5 A. Yes.
6 Q. And reading the first sentence of the letter,
7 starting after the words, "Dear Matt," it says,
8 "Enclosed you will find an endorsement to
9 Marine policy number DMM00003-00 (sic), which
10 amends the policy to Port Risk and deletes all
11 but one man from P&I effective December 9, 2002
12 to the expiration date of August 13, 2003."
13 Would you agree, Mr. Scola, that that
14 language makes it very clear that the boat is
15 going on port risk and that there's coverage
16 for only one man under crew P&I?
17 MR. LANGER: Objection. The document
18 speaks for itself.
19 A. It makes it clear.
20 Q. Very clear?
21 MR. LANGER: Objection.
22 Q. Clear is fine. I won't force you to accept my
23 qualification of the word "clear." Makes it
24 clear. Wouldn't it have been possible at the

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1 time the letter, Exhibit 8, was written to have
2 put in similar language, saying something to
3 the effect, that deletes all crew P&I
4 coverage --
5 MR. LANGER: Objection.
6 Q. -- to make it clear with respect to the changes
7 that occurred on Policy 3?
8 MR. LANGER: Objection to the form of the
9 question.
10 A. That -- that would have made it clear with
11 respect to the crew coverage. But why would
12 you single out the crew coverage under port
13 risk as opposed to all those other things that
14 also change once a vessel goes under port risk?
15 I mean, the letter could go on and on. The
16 reason that -- the reason that -- my belief,
17 the reason Exhibit 9 says that it has one
18 crewman is because it's an odd situation to
19 have the one crewman on a port risk policy
20 when, normally, there aren't any covered
21 crewmen.
22 Q. So, in effect, so long as the insured is aware
23 if as -- if one assumes your interpretation of
24 the scope of coverage under the port risk

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1 policy is correct that there is no coverage
2 afforded crew for P&I if a vessel is on port
3 risk, if one assumes (A) that that is correct
4 and further assumes that that is known by the
5 insured, it's not necessary. Is that what
6 you're saying?
7 A. It's not necessary to -- to say there are no
8 crew covered.
9 Q. Okay. Okay. I'd like you to look at
10 Exhibit 3, please.
11 A. Exhibit 3 is the endorsement? Is that --
12 Q. No. Exhibit 3, the one that's got the
13 handwriting on it, it's a letter --
14 A. Yeah.
15 Q. -- correspondence dated December 8th, 2003 from
16 Craig McBurnie to Bob McVey.
17 A. Yeah.
18 Q. Do you recognize the handwriting --
19 A. No.
20 Q. -- "Per Bill"?
21 A. I don't recognize the handwriting. I probably
22 should, but I don't.
23 Q. I don't even recognize my own half the time.
24 That's not your handwriting?

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1 A. No. It is not. I'm just -- I -- I don't
2 recognize the handwriting. I don't.
3 Q. That's fine.
4 A. I am trying to, but I don't.
5 Q. I haven't put the next question to you.
6 A. Yeah.
7 Q. "Per Bill, recs" -- recommends -- "getting
8 legal viewpoint Bob Murphy." Now, that's my
9 interpretation. You don't have to accept that
10 as a correct interpretation of that language.
11 But it brings up a question. Did you ever see
12 a copy of Exhibit 3 with or without the
13 handwriting on it prior to today or -- hold the
14 end of that -- sometime around December of 2003
15 when, apparently, it was sent to Mr. McVey?
16 A. Can I read it a little more thoroughly?
17 'Cause --
18 Q. Oh, yes.
19 A. Yeah.
20 MR. ABROMOVITZ: Take a two-minute break.
21 I'll be right back.
22 (Brief recess taken.)
23 BY MR. PETTINGELL:
24 Q. Mr. Scola, I believe I had asked whether you

1 A. Yeah.
2 Q. Are you aware, Mr. Scola, whether or not a
3 legal viewpoint was obtained from Holbrook &
4 Murphy?
5 A. I'm not.
6 Q. Are you aware of whether or not a legal opinion
7 was obtained from any law firm as to the scope
8 of coverage available under a port risk policy
9 under the circumstances of this case?
10 MR. LANGER: I'm going to -- as to whether
11 one was -- if he's aware if one was received,
12 I'm going to, certainly, instruct him not to
13 answer any further questions about what that
14 content was.
15 MR. PETTINGELL: That's a fair instruction.
16 We may go around about that. But, at the
17 moment, my question is whether he's aware of
18 whether or not a legal opinion was obtained.
19 And I'm entitled to that.
20 A. I'm not aware if one was obtained.
21 Q. Who would know at OMI?
22 A. I don't know if -- I don't know if anyone at
23 OMI would know.
24 Q. Whether or not one was --

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1 recall ever seeing a copy of what's been marked
2 as Exhibit 3 at any time from December of 2003
3 up until August of 200- -- December 2003 after
4 it was sent.
5 MR. LANGER: Is that your question?
6 Q. Yes.
7 A. Yeah. I -- I think I probably did see this.
8 Q. And do you recall any discussions after you saw
9 this about the advisability of getting a legal
10 viewpoint from Bob Murphy?
11 A. I don't.
12 Q. Do you know who Bob Murphy is?
13 A. I do. Yeah.
14 Q. Who's Bob Murphy?
15 A. He's an attorney, one of probably several Bob
16 Murphys. The one I know --
17 MR. LANGER: In the greater Boston area.
18 A. Well, the one I know is an attorney. It's --
19 Q. Holbrook & Murphy?
20 A. Yes.
21 Q. And that's a law firm that OMI occasionally
22 does business with on occasion?
23 A. Yeah.
24 Q. Okay.

1 A. One --
2 Q. -- obtained?
3 A. -- was obtained. Yeah.
4 Q. If a determination was made by Sunderland to
5 get a legal opinion on an issue, would they
6 generally hire a law firm directly? Or would
7 they go through OMI and have OMI assist in
8 hiring a law firm for them?
9 A. They're pretty strict about going directly.
10 Q. Okay. And you don't know whether one was
11 obtained?
12 A. I don't.
13 MR. PETTINGELL: Okay. Well, we can't beat
14 that one to death anymore. That concludes my
15 questions.
16 MR. LANGER: I'm done. I have no
17 questions.
18 MR. ABROMOVITZ: Nothing further.
19 (Whereupon the deposition was concluded at
20 3:31 p.m.)

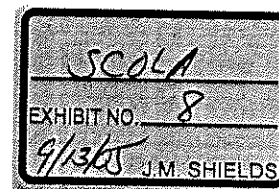
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WILLIAM J. SCOLA

PAGE	LINE	CORRECTION
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Notary Public



October 3, 2003

Mr. Matt Russo
Mary & Josephine Corp.
279 Western Avenue
Gloucester, MA 01930

RE: F/V Mary & Josephine

Dear Matt:

Per our telephone conversation today, I notified Underwriters that the F/V Mary & Josephine has not been fishing since May 1, 2003 and will not fish until November, 2003. I am trying to get another Port Risk approved to your expired policy for the period May 1, 2003 to August 12, 2003. The new effective date for the next Port Risk credit is August 13, 2003. Once the vessel begins fishing again, please fill in the date below and mail this letter back to me in the enclosed envelope.

Date the F/V Mary & Josephine was tied up: August 13, 2003

Date the F/V Mary & Josephine began fishing: 12-21-03
for RCM

Matt Russo

Date

If you have any questions, please do not hesitate to call.

Sincerely,

Lynanne Houde

lh

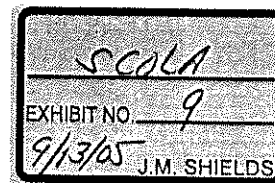
enclosure

11-25-03



Ocean Marine Insurance Agency, Inc.

334 Knight Street Unit 134 Warwick, Rhode Island 02886-1283



December 18, 2002

Mr. Matt Russo
Mary & Josephine Corp.
279 Western Avenue
Gloucester, MA 01930

Re: F/V Mary & Josephine

Dear Matt:

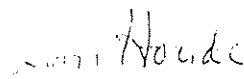
Enclosed you will find an Endorsement to Marine policy number DMM0000003-00 which amends the policy to Port Risk and deletes all but one man from P&I effective December 9, 2002 to the expiration date of August 13, 2003. Please keep this Endorsement with the policy covering the period August 13, 2002 to August 13, 2003. The original Endorsement has been sent to First Pioneer Farm Credit.

Also enclosed is an invoice showing a return premium of \$6,925. Mid February, 2003 we will mail this credit to First Insurance Funding Corp. They will apply this credit to your account and amend the remaining installments accordingly.

REMINDER: Please give me a call when the vessel is ready to go fishing as I need to add the men back on.

If you have any questions, please do not hesitate to call.

Sincerely,


Lynanne Houde

lh

CC: First Pioneer Farm
Credit
P. O. Box 720
Middletown, MA 02346

Ocean Marine Insurance Agency, Inc.

334 Knight Street Unit 134 Warwick, Rhode Island 02886-1283
tel 800.767.6687 fax 401.732.5310 www.omaiinc.com